

§ 105-130.25. Credit against corporate income tax for construction of cogenerating power plants.

(a) Credit. – A corporation or a partnership, other than a public utility as defined in G.S. 62-3(23), that constructs a cogenerating power plant in North Carolina is allowed as a credit against the tax imposed by this Part an amount equal to ten percent (10%) of the costs paid during the taxable year to purchase and install the electrical or mechanical power generation equipment of that plant. The credit may not be taken for the year in which the costs are paid but shall be taken for the taxable year beginning during the calendar year following the calendar year in which the costs were paid. To be eligible for the credit allowed by this section, the corporation or partnership must own or control the power plant at the time of construction. The credit allowed by this section may not exceed the amount of tax imposed by this Part for the year reduced by the sum of all credits allowed, except payments of tax made by or on behalf of the taxpayer.

(b) Cogenerating Power Plant Defined. – For purposes of this section, a cogenerating power plant is a power plant that sequentially produces electrical or mechanical power and useful thermal energy using natural gas as its primary energy source.

(c) Alternative Method. – A taxpayer eligible for the credit allowed by this section may elect to treat the costs paid during an earlier year as if they were paid during the year the plant becomes operational. This election must be made on or before April 15 following the calendar year in which the plant becomes operational. The election must be in the form prescribed by the Secretary and must contain any supporting documentation the Secretary may require. An election with respect to costs paid by a partnership must be made by the partnership and is binding on any partners to whom the credit is passed through.

The costs with respect to which this election is made will be treated, for the purposes of this section, as if they had actually been paid in the year the plant becomes operational. If a taxpayer makes this election, however, the credit may not exceed one-fourth the amount of tax imposed by this Part for the year reduced by the sum of all credits allowed, except payments of tax by or on behalf of the taxpayer, but any unused portion of the credit may be carried forward for the next 10 taxable years. An election made under this subsection is irrevocable.

(d) Application. – To be eligible for the credit allowed in this section, a taxpayer must file an application for the credit with the Secretary on or before April 15 following the calendar year in which the costs were paid. The application shall be in the form prescribed by the Secretary and shall include any supporting documentation the Secretary may require. An application with respect to costs paid by a partnership must be made by the partnership on behalf of its partners.

(e) Ceiling. – The total amount of all tax credits allowed to taxpayers under this section for payments for construction and installation made in a calendar year may not exceed five million dollars (\$5,000,000). The Secretary shall calculate the total amount of tax credits claimed from the applications filed pursuant to subsection (d). If the total amount of tax credits claimed for payments made in a calendar year exceeds five million dollars (\$5,000,000), the Secretary shall allow a portion of the credits claimed by allocating the total allowable amount among all taxpayers claiming the credits in proportion to the size of the credit claimed by each taxpayer. In no case may the total amount of all tax credits allowed under this section for costs paid in a calendar year exceed five million dollars (\$5,000,000).

If a credit claimed under this section is reduced as provided in this subsection, the Secretary shall notify the taxpayer of the amount of the reduction of the credit on or before December 31 of the year the taxpayer applied for the credit. The amount of the reduction of the credit may be carried forward and claimed for the next 10 taxable years if the taxpayer reapplies for a credit for the amount of the reduction, as provided in subsection (d). In such a reapplication, the costs

for which a credit is claimed shall be considered as if they had been paid in the year preceding the reapplication. The Secretary's allocations based on applications filed pursuant to subsection (d) are final and shall not be adjusted to account for credits applied for but not claimed. (1979, c. 801, s. 34; 1993 (Reg. Sess., 1994), c. 674, ss. 1, 2, 4; 1995, c. 17, s. 2; 1998-98, s. 69.)